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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/593,793	06/13/2000	Jiangchun Xu	210121.427C15	5630

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EXAMINER

TAYLOR, JANELLE

ART UNIT	PAPER NUMBER
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1655

DATE MAILED: 01/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/593,793

Applicant(s)

XU ET AL

Examiner

Janell Taylor Cleveland

Art Unit

1655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 October 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17, 19-24, 26-28, 30 and 32-65 is/are pending in the application.
- 4a) Of the above claim(s) 1-17, 21, 23 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) 62 is/are allowed.
- 6) ☐ Claim(s) 19-20, 22, 26-28, 30, and 61, 63-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 1-17, 21, 23-24, and 33-60 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 12. Claims 18, 25, 29, and 31 are canceled. Claims 19-20, 22, 26-28, 30 and 61-65 are pending. Also, SEQ ID NO: 110 was elected, but the claims were drawn to SEQ ID NO: 113. For examination purposes, it is assumed that Applicant intended SEQ ID NO: 113 to be the elected sequence. If this is not correct, please inform Examiner in next communication.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 19, 20, 22, 26-28, 30, 61, and 63-65 are rejected under 35 U.S.C. 102(e) as being anticipated by Covacci et al. (USPN 6,090,611).

Claim 61 is drawn to an immunogenic composition comprising an immunostimulant and a polypeptide, wherein the polypeptide comprises a sequence selected from the group consisting of: a) SEQ ID NO: 113, and b) immunogenic portions of SEQ ID NO: 113. Claim 63 is drawn to an immunogenic composition according to

Art Unit: 1655

claim 61, wherein the immunostimulant is selected from the group consisting of: 3-de-O-acylated monophosphoryl lipid A and saponins. Claim 64 is drawn to an immunogenic composition comprising an immunostimulant and a polypeptide, wherein the polypeptide comprises a sequence selected from the group consisting of: a) SEQ ID NO: 113, and b) immunogenic portions of SEQ ID NO: 113; and c) sequences having at least 90% sequence identity to SEQ ID NO: 113, wherein the polypeptide possesses an ability to stimulate cytotoxic T lymphocyte response in sera from normal donors. Claim 65 is drawn to a method for stimulating an immune response in a patient, comprising administering a composition according to claim 64. Claim 19 is drawn to an immunogenic composition according to claim 61, wherein the immunostimulant is an adjuvant. Claim 20 is drawn to an immunogenic composition according to claim 61, wherein the immunostimulant induces a Type I response. Claim 22 is drawn to a method for stimulating an immune response comprising administering to a patient an effective amount of an immunogenic composition according to claim 61. Claim 26 is drawn to an immunogenic composition wherein the immunostimulant is an adjuvant. Claim 27 is drawn to the immunostimulant of claim 64 inducing a Type I response. Claim 28 is drawn to the antigen-presenting cell being a dendritic cell. Claim 30 is drawn to the antigen-presenting cell being a dendritic cell.

Covacci et al. teaches an immunogenic composition comprising an immunostimulant and a polypeptide. Covacci et al. also teaches adjuvants such as saponin. (Col. 23). SEQ ID NO: 2 contains a nucleotide which codes for an amino acid, which is the same as a portion of instant SEQ ID NO: 113. Covacci teaches that

Art Unit: 1655

portions of SEQ ID NO: 2 illicit an immunogenic response. Because the claim is drawn to "immunogenic portions of SEQ ID NO: 113", this claim is anticipated by Covacci et al.

**Summary**

4. Claims 19, 20, 22, 26-28, 30, and 61-65 are pending. Claims 19, 20, 22, 26-28, 30, 61, and 63-65 are rejected under 35 U.S.C. 102(e) as being anticipated by Covacci et al. (USPN 6,090,611). Claim 62 is free of the prior art and is allowable.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janell Taylor Cleveland, whose telephone number is (703) 305-0273.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jones, can be reached at (703) 308-1152.

Any inquiries of a general nature relating to this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Papers related to this application may be submitted by facsimile transmission. Papers should be faxed to Group 1634 via the PTO Fax Center using (703) 305-3014 or 305-4227. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG (November 15, 1989.)

Janell Taylor Cleveland

December 17, 2001

  
W. Gary Jones  
Supervisory Patent Examiner  
Technology Center 1600